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14 PLASTIC SURGERY ASSOCIATES

15 **UNITED STATES DISTRICT COURT**

16 **DISTRICT OF NEVADA**

17 JENNIFER TAUSINGA, on behalf of herself  
18 and all others similarly situated;

19 Plaintiff,  
20 vs.

21 HANKINS & SOHN PLASTIC SURGERY  
22 ASSOCIATES, an unknown entity;  
23 HANKINS PLASTIC SURGERY  
24 ASSOCIATES, P.C., a domestic professional  
25 corporation; DOES 1 through 20, inclusive

26 Defendants.

27 Case No.:

28 **DEFENDANT'S NOTICE OF  
REMOVAL**

**(Clark County District Court,  
Case No. A-23-868157-C)**

29 **TO THE CLERK OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT  
30 OF NEVADA, THE PLAINTIFF, AND HER ATTORNEYS OF RECORD:**

31 **PLEASE TAKE NOTICE** that pursuant to 28 U.S.C. §§ 1332(d), 1446, and 1453,  
32 Defendant, HANKINS PLASTIC SURGERY ASSOCIATES, P.C. dba HANKINS & SOHN  
33 PLASTIC SURGERY ASSOCIATES (wrongfully identified separately as "Hankins & Sohn  
34 Plastic Surgery Associates, an unknown entity"), hereby remove the state court action described  
35 below from the Eighth Judicial District Court, Clark County, Nevada, filed by JENNIFER  
36 TAUSINGA ("Plaintiff"), Case No. A-23-868157-C, Dept. 9 (hereinafter the "State Court  
37  
38

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1 Action") to the United States District Court for the District of Nevada, and submit the following  
2 statement of facts, which entitle this matter to removal:

3 **JURISDICTION AND VENUE**

4 1. The Court has subject matter jurisdiction over this case pursuant to the Class Action  
5 Fairness Act of 2005, which is codified in part as 28 U.S.C. § 1332(d).

6 2. This Court is in the judicial district and division embracing the place the State Court  
7 Action was brought and was pending. Thus, this Court is the proper District Court to which this  
8 Court should be removed. 28 U.S.C. §§ 1441(a) and 1446(a). Moreover, this venue is proper as  
9 a substantial part of the alleged events or omissions giving rise to this lawsuit that occurred in the  
10 District of Nevada.

11 **THE ACTION AND TIMELINESS OF REMOVAL**

12 3. On March 30, 2023, Plaintiff, purportedly on behalf of herself and others similarly  
13 situated, filed a Class Action Complaint and Demand for Jury Trial (the "Complaint") against  
14 Defendants in the State Court Action. A true and correct copy of the Complaint is attached to this  
15 Notice of Removal as **Exhibit A**.

16 4. On April 25, 2023, Defendant's counsel executed a Waiver of Service of Summons  
17 under Rule 4.1 from the Nevada Rules of Civil Procedure. A true and correct copy of the Waiver  
18 of Service is attached to this Notice of Removal as **Exhibit B**.

19 5. The removal is timely under 28 U.S.C. § 1446(b) because Defendant filed this  
20 removal within thirty (30) days of being served within the Complaint. *See Murphy Bros. v.*  
21 *Michetti Pipe Stinging, Inc.*, 526 U.S. 344, 348 (1999)(time period for removal begins when the  
22 defendant is served).

23 **CAFA JURISDICTION**

24 6. Basis of original jurisdiction: This Court has original jurisdiction over this action  
25 and under the Class Action Fairness Act of 2005 ("CAFA") (codified in pertinent part at 28 U.S.C.  
26 § 1332(d)). Section 1332(d) provides that a district court shall have original jurisdiction over a  
27 class action with one hundred (100) or more putative class members from which the matter in  
28 controversy aggregately exceeds the sum or value of \$5 million. Section 1332(d) further provides

that, for CAFA to apply, a putative class member must be a citizen of a state different from any defendant.

7. As set forth below, pursuant to 28 U.S.C. § 1441(a), defendants may remove the State Court Act to federal court under the Class Action Fairness Act of 2005 because: (1) this action is pled as a class action; (2) the putative class include more than one hundred (100) members; (3) some members of the putative class are citizens of the state different than that of defendants; and (4) the matter in controversy, in the aggregate, exceeds the sum or value of \$5 million, exclusive of interest and costs.

## THE ACTION IS PLED AS A CLASS ACTION

8. CAFA defines a “class action” as “any civil action filed under Rule 23 of the Federal Rules of Civil Procedure or similar State statute or rule of judicial procedure authorizing an action to be brought by one or more of representative persons as a class action.” 28 U.S.C. § 1332(d)(1)(B).

9. Plaintiff seeks class certification under Rule 23 of the Nevada Rules of Civil Procedure. *See* Complaint at ¶¶ 3, 74, 75. The Supreme Court of Nevada has held that Rule 23 of the Nevada Rule of Civil Procedure is “identical to its federal counterpart.” *Meyer v. Eighth Judicial Dist. Court*, 885 P.2d 622, 626 (Nev. 1994). Thus, the first CAFA requirement is satisfied.

## THE PUTATIVE CLASS INCLUDES AT LEAST 100 MEMBERS

10. Plaintiff seeks to represent a class of persons to be defined as follows: “All individuals in the United States whose PII<sup>1</sup> and/or PHI<sup>2</sup> was compromised in the Data Breach which was announced on or about March 14, 2023 (the “Class”).” *See* Complaint at ¶ 75. Specifically, Plaintiff TAUSINGA asserts that she “brings this class action individually and on behalf of individuals that have had their sensitive PII/PHI disclosed and obtained by unknown

<sup>1</sup> Plaintiff defines “PII” as personally identifiable information, “such as, *inter alia*, their first and last names, driver’s license numbers, home addresses, telephone numbers, email addresses, and dates of birth.” Complaint at ¶ 1.

<sup>2</sup> Plaintiff defines “PHI” as personal health information, “such as, *inter alia*, their medical history, medical consultation notes and photographs.” *Id.* at ¶ 2.

1 third-parties as a result of Defendants' failure to properly secure and safeguard the PII/PHI  
 2 described above." *Id.* at ¶ 3.

3 11. Plaintiff excluded from the Class are "Defendants, its subsidiaries and affiliates,  
 4 officers and directors, any entity in which Defendants have a controlling interest, the legal  
 5 representative, heirs, successors, or assigns of any such excluded party, the judicial officer(s) to  
 6 whom this action is assigned, and the members of their immediate families." *Id.* at ¶ 76.

7 12. Plaintiff further alleges that "there are at minimum, hundreds of members of the  
 8 Class described above." *Id.* at ¶ 78. Moreover, Dr. Hankins also attested that there are more than  
 9 thousands of potential members of the putative Class. Therefore, based on Plaintiff's own  
 10 allegations, the number of putative Class members exceeds the statutorily required minimum of  
 11 100.

12 **MINIMAL DIVERSITY OF CITIZENSHIP EXISTS**

13 13. Pursuant to 28 U.S.C. § 1332(d)(2)(A), "the district court shall have original  
 14 jurisdiction" over a "class which. . .any member of the class of plaintiff is a citizen of the state  
 15 different from any defendant." (emphasis added). *See also Abreggo Abreggo v. The Dow*  
 16 *Chemical Co.*, 443 F.3d 676, 680, n. 5 (9th Cir. 2006) ("[o]ne way to satisfy minimal diversity to  
 17 by demonstrating that any member of a class of plaintiff is . . . a citizen or subject of a foreign state  
 18 and any defendant is a citizen of a state").

19 14. Hankins Plastic Surgery Associates, P.C. dba Hankins & Sohn Plastic Surgery  
 20 Associates ("Hankins & Sohn Plastic Surgery Associates") is a professional corporation organized  
 21 and existing under the laws of the State of Nevada. Moreover, Hankins & Sohn Plastic Surgery  
 22 Associates conducts business in Nevada.

23 15. Although Plaintiff alleges that she was and continues to be a Nevada resident, the  
 24 Class from which Plaintiff seeks to assert a Class Action Status are "individuals in the United  
 25 States whose PII and/or PHI was comprised in the Data Breach which occurred in or before March  
 26 2023." Complaint at ¶ 75. As some of the purported class members are not Nevada residents,  
 27 diversity of citizenship is met. In sum, the diversity of citizenship in this matter exists due to  
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1 Plaintiff's desire to represent all individuals in the United States who were allegedly affected by  
 2 the Data Breach.

3       16. As established in ¶ 75 of Plaintiff's Complaint, minimal diversity of citizenship is  
 4 established pursuant to CAFA because not all of the purported Class members are Nevada  
 5 residents. In fact, many of the purported Class members are Arizona and California residents.

6       **THE AMOUNT IN CONTROVERSY EXCEEDS THE CAFA THRESHOLD<sup>3</sup>**

7       17. Where a complaint has not specified the amount of damages sought, as is the case  
 8 with Plaintiff's Complaint, the removing defendant must provide by the preponderance of evidence  
 9 that the jurisdictional amount in controversy is satisfied. 28 U.S.C. § 1446(c)(2)(B). The United  
 10 States Supreme Court held that "a defendant's notice of removal need include only a plausible  
 11 allegation that the amount in controversy exceeds the jurisdictional threshold" to meet the  
 12 standard. *Dart Cherokee Basin Oper. Co., LLC v. Owens*, 135 S. Ct. 547, 554 (2014).

13       18. Plaintiff requests the following relief, which aggregated across the putative Class  
 14 of thousands of individual places more than \$5 million in controversy, exclusive of interest and  
 15 costs.

16       19. Damages. Plaintiff alleges that she and the Class have and will continue to suffer  
 17 injuries, including: (1) out of pocket expenses; (2) loss of time and productivity through efforts to  
 18 ameliorate, mitigate, and deal with the future consequences of the Data Breach; (3) theft of their  
 19 valuable PII and/or PHI; (4) the imminent and certainly impeding injury flowing from fraud and  
 20 identity theft posed by their PII/PHI being disclosed to unauthorized recipients and cybercriminals;  
 21 (5) damages to and diminution in value of their PII and/or PHI; (6) and continued risk to Plaintiff's  
 22 and the Class Members' PII and/or PHI, which remains in the possession of Defendants and which  
 23 is subject to further breaches[.]" *Id.* at ¶ 73.

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26       <sup>3</sup> The amount in controversy set forth in this Notice of Removal is solely for the purpose of establishing  
 27 that the amount in controversy exceeds the \$5 million threshold. This section is not intended and cannot  
 28 be construed as an admission that Plaintiff can state a claim or is entitled to damages in any amount.  
 Defendant denies liability, denies Plaintiff is entitled to recoup from Defendant any amount, and denies that  
 the Class can be properly certified in this matter.

1           20. Plaintiff has also alleged that she “and Class Members have incurred and will incur  
 2 out of pocket costs for protective measures, such as identity theft protection, credit monitoring,  
 3 credit report fees, credit freeze, and similar costs related to the Data Breach.” *Id.* at ¶ 69.  
 4 Moreover, Plaintiff alleges that “[b]esides the monetary damage sustained in the event of identity  
 5 theft, patients may have to spend hours trying to resolve identity theft issues.” *Id.* at ¶ 70. In this  
 6 matter, Plaintiff has specifically alleged that one of her damages is out of pocket costs for  
 7 “protective measures, such as identity theft protection” and credit monitoring. *Id.* at ¶ 69. Plaintiff  
 8 has also affirmatively prayed for a “mandatory injunction directing Defendants to hereinafter  
 9 adequately safeguard the PII and/or PHI of the Class by implementing improved security  
 10 procedures and measures[.]” Complaint’s Prayer for Relief at ¶ 4.

11           21. Other than pleading the statutory minimum requirement in the State Court Action,  
 12 Plaintiff does not allege the amount in compensatory damages that she and the Class allegedly  
 13 sustained. *See* Complaint at ¶ 69, 73, 92, 117, 128, 141. However, one potential estimate of the  
 14 valuation is the attempt to mitigate the effects of the Data Breach due to Plaintiff’s contention of  
 15 “a significantly increased and certainly impending risk of fraud, identity theft, and similar forms  
 16 of criminal mischief, risk which may last for the rest of their lives.” *Id.* ¶ 8. Plaintiff has also  
 17 alleged that she “and Class Members have incurred and will incur out of pocket costs for protective  
 18 measures, such as identity theft protection, credit monitoring, credit report fees, credit freeze, and  
 19 similar costs related to the Data Breach.” *Id.* at ¶ 69.

20           22. Although Plaintiff does not explicitly estimate the effects to mitigate the effects of  
 21 the breach, Plaintiff has requested “a mandatory injunction directing Defendants to hereinafter  
 22 adequately safeguard PII and/or PHI of the Class by implementing improved security procedures  
 23 or measures.” *Id.* at Plaintiff’s Prayer for Relief, ¶ 4. Hence, this injunction and recovery sought  
 24 includes the cost of credit monitoring services.

25           23. Three identity protection agencies, Equifax, Lifelock, and Experian, advertise  
 26 monthly rates for credit monitoring services for all three credit bureaus and with identity theft

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1 insurance ranging from \$11.99<sup>4</sup> to \$24.99 per month. Experian offers credit, social security, and  
 2 bank/credit account monitoring services with identity theft protection for \$24.99 per month for an  
 3 individual and \$34.99 per month per family. Multiplying the cost of providing two years of credit  
 4 monitoring services at \$24.99 by 10,000,<sup>5</sup> which is the purported minimum amount of people  
 5 whom Plaintiff designates as the Class, the amount in controversy for credit monitoring alone for  
 6 two years is approximately \$5,997,600.00.

7       24. Plaintiff also claims that she and her Class experienced “damages to and diminution  
 8 of value of the PII and/or PHI”. *Id.* ¶ 73. These nebulous concepts are unquantified in the  
 9 Complaint, and will further add to the damages in excess of CAFA’s jurisdictional threshold.

10      25. Plaintiff also alleges that she and her Class suffered “emotional distress” as a result  
 11 of the Data Breach. *Id.* at ¶ 72. This nebulous concept is unquantified in the Complaint, but will  
 12 further add the damages in excess of CAFA jurisdictional threshold.

13      26. Restitution. Plaintiff’s Complaint purportedly seeks restitution. Complaint at ¶  
 14 79(d). However, the Complaint contains no allegations that would support, or even suggest, the  
 15 amount in restitution to which she or any of the putative Class Members are entitled. *Id.* Hence,  
 16 Defendant does not entirely include restitution in their calculation of the total amount in  
 17 controversy. Nevertheless, the amount in controversy further exceeds CAFA’s \$5 million  
 18 threshold when these alleged damages are combined with the Class and Plaintiff’s compensatory  
 19 damages.

20      27. Attorneys’ Fees. Plaintiff also seeks to recover her attorney’s fees. *Id.* at ¶¶ 93,  
 21 107, 118, 131, 142, 154. “[W]here an underlying statute authorizes an award of attorney’s fees,  
 22 either with mandatory or discretionary language, such fees may be included in the amount of  
 23 controversy.” *Lauder Milk v. U.S. Bank Nat’l Assoc.*, 479 F.3d 994, 1004 (9th Cir. 2007)(internal  
 24

25      25      26      27      28      <sup>4</sup>See <https://www.equifax.com/personal/products/identity-theft-protection/> (last visited May 1, 2023);  
 LifeLock Official Site | Identity Theft Protection (norton.com) (last visited May 1, 2023);  
<https://www.experian.com/consumer-products/compare-credit-report-and-score-products.html#comparison-table> (last visited May 2, 2023).

5      Defendant uses this figure conservatively, as Defendant’s Declaration estimates the number of clients that  
 might have been impacted by the Data Breach was 20,000.

1 citations omitted). The Court may consider reasonable estimates of attorney's fees in analyzing  
 2 disputes over the amount in controversy. *See Brady v. Mercedes Benz, USA, Inc.*, 243 F. Supp. 2d  
 3 1004, 1010-1011 (N.D. Cal. 2002). Here, statutory attorney's fees are available under NRS  
 4 41.600. Hence, attorneys' fees should be included in analyzing the amount in controversy.

5 28. In the Ninth Circuit, twenty-five percent (25%) of the award has been used as a  
 6 "benchmark" for attorney's fees. *Handlin v. Chrysler Corp.*, 150 F.3d 1011, 1029 (9th Cir. 1998).  
 7 Using this benchmark, attorney's fees further increase the amount in controversy for alleged  
 8 liability exposure above the jurisdictional minimum for removal.

9 29. Accordingly, Defendant sufficiently removed the State Court Action to this Court  
 10 as (1) the State Court Action is pled as a Class Action and (2) the class size, (3) diversity, and (4)  
 11 amount in controversy requirements of CAFA are satisfied.

12 30. This Notice is submitted without a waiver of any procedural or substantive defense.

13 31. No substantive proceedings have been held in the State Court in this matter. Copies  
 14 of all filed documents in the State Court Action are attached as follows:

EXHIBIT NO.	DOCUMENT NAME
Exhibit A	Complaint and Demand for Jury Trial
Exhibit B	Waiver of Service of Summons
Exhibit C	Peremptory Challenge
Exhibit D	Notice of Department Reassignment

21 32. The State Court Action was filed on March 30, 2023, thus one year has not elapsed  
 22 from the date the action in State Court has commenced.

23 **NOTICE OF INTERESTED PARTIES**

24 Pursuant to FRCP 7.1, a Certificate of Interested Parties is being filed concurrently with  
 25 this Notice of Removal.

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As required by 28 U.S.C. § 1446(d), Defendant is providing written notice of the filing of its Removal to Plaintiff and are filing copies of this Notice of Removal to the Clerk of the Eighth Judicial District Court of Clark County, Nevada.

DATED this 25th day of May, 2023.

KRAVITZ SCHNITZER JOHNSON  
& WATSON, CHTD.

/s/ L. Renee Green

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the 25th day of May, 2023, I served a true and correct copy of the foregoing **DEFENDANT'S NOTICE OF REMOVAL** was served via the United States District Court CM/ECF system to all parties or persons requiring notice:

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